

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CT CORPORATION SYSTEMS, INC.,)

Plaintiff)

v.)

COLONIAL CARE OF ALLEGHANY)
COUNTY, LP, d/b/a BRIAN CENTER OF)
ALLEGHANY, INC.,)

Defendant.)

05 - 11457 EFH

Civil Action No. 65506

RECEIPT #
AMOUNT \$ 250.00
SUMMONS ISSUED 1
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. J.F.
DATE 7/11/2005

COMPLAINT

Plaintiff, CT CORPORATION Systems, Inc. (hereinafter "CT"), for its Complaint against defendant, COLONIAL CARE OF ALLEGHANY COUNTY, LP, d/b/a BRIAN CENTER OF ALLEGHANY, INC. (hereinafter "Colonial") states as follows:

MAGISTRATE JUDGE JLA

I. PARTIES

1. Plaintiff, CT, is a corporation incorporated under the laws of the State of Delaware having its principal place of business in New York City, New York.
2. Defendant, Colonial, is a limited partnership organized under the laws of the State of Virginia having its principal place of business in the State of Virginia. Colonial may be served with process by serving Linda Clarke, 2 Gaston Drive, Pittsfield, Massachusetts 01201.

II. JURISDICTION AND VENUE

3. The Court has jurisdiction over this lawsuit under 28 U.S.C. § 1332(a)(1), because the Plaintiff and the Defendant are citizens of different states, and the amount

in controversy exceeds the jurisdictional amount set forth in 28 U.S.C. §1332, exclusive of interest and costs. This action is brought as a declaratory judgment action under 28 U.S.C. §2201 because there is an actual case or controversy between the parties and for other relief as set forth below.

4. Venue is proper in this district and division under 28 U.S.C. § 1391(a) because, among other reasons, a substantial part of the contract formation for which declaratory relief is sought and, therefore, the events giving rise to the claim occurred in this district and division.

III. GENERAL ALLEGATIONS

5. CT Corporation System ("CT") acts as the registered agent for corporations and other artificial entities. CT charges an annual fee for its service as well as a fee for many of the tasks that it undertakes in its capacity as a registered agent.

6. In or before 1996, an agent of Lenox Healthcare, Inc. ("Lenox") contacted CT at its Boston, Massachusetts office about having CT serve as the registered agent for Lenox and a number of Lenox affiliated companies, including Colonial.

7. CT agreed to serve as registered agent for Lenox and the numerous other related companies. In exchange for grouping the Lenox related companies under Lenox, the cost of CT's services was less than if each company sought separate representation.

8. CT gave Lenox the option, which was exercised, to organize the related companies into various groups for different purposes, including billing and receipt of service of process. By organizing the companies into what was denominated

"subgroups," Lenox saved money in fees and simplified the identification of individuals within Lenox and its related companies to whom various documents were to be submitted.

9. Colonial was identified as one of the members of the Lenox group of companies, and CT was told to send all billing and service of process for Colonial to Linda Clarke, Executive Vice-President, Lenox Healthcare Systems, at its then Massachusetts office.

10. The initial address given to CT for Lenox was 2 South Street Suite 360, Pittsfield, Massachusetts 01201.

11. From 1996 until sometime in or after 2001, all invoices for CT's services for the Lenox subgroup were sent to Linda Clarke at Lenox's address in Massachusetts.

12. The initial invoices that created the Lenox account, including Colonial, were sent to Lenox's Massachusetts address. All invoices including the first invoices and all subsequent invoices contained on the reverse side twelve numbered paragraphs under the heading "CT CORPORATION SYSTEM Order, Billing, and Collection Terms and Conditions" (hereinafter "Contractual Terms").

13. Until 2001, as indicated below, Lenox paid the invoices for Colonial and neither Lenox nor Colonial or any other related company objected to any of the Contractual Terms contained in the invoices.

14. Paragraph 5 of the Contractual Terms states as follows: "Except in the case of CT's proven negligence or willful misconduct, in either of which events CT's liability (in the aggregate) shall not exceed \$50,000, CT's entire liability and Customer's exclusive remedy for damages due to performance or non-performance of CT, for any cause or

service whatsoever, regardless of the form of action, whether in contract or in tort, shall be limited to the refund of the charges specifically related to the performance or non-performance of the direction of Customer. . . .”

15. Paragraph 6 of the Contractual Terms states as follows: “While CT takes reasonable steps to provide complete and accurate services, CT cannot warrant or guarantee that its services are complete or error free. CT is not an insurer with regard to the services performed. In order to obtain CT’s services for the charges stated, Customer agrees to assume the risk for any and all liabilities disclaimed by CT and all damages in excess of the limited remedy provided herein.”

16. Paragraph 7 of the Contractual Terms states as follows: “It is Customer’s sole responsibility to keep CT informed as to any changes in address, or of changes of persons authorized to receive CT notifications, reports, processes and legal matters. Such changes are deemed to be effective when entered into CT’s customer record system.”

17. Paragraph 9 of the Terms and Conditions states as follows: “If CT or its employees, affiliates, subsidiaries, or representatives are subject to legal process on behalf of its Customer, regardless of whether such process is due to Customer’s act or omission, the Customer shall indemnify CT for any expenses incurred. These expenses include reasonable attorney fees that CT, in its sole discretion, incurs in obtaining legal representation.”

18. In accordance with the Contractual Terms, CT notified the Secretary of the Commonwealth of Virginia’s Corporation Commission that it would serve as Colonial’s registered agent.

19. In 2001, CT sent invoices to Lenox, including the subgroup in which Colonial was listed, to Lenox.. No invoice sent to Lenox or its related group of companies was returned but neither was it paid.

20. Colonial did not inform CT that Colonial documents should be sent to any address other than that of Lenox.

21. On information and belief, on July 10, 2001, unbeknownst to CT at the time, Lenox filed a bankruptcy petition in Wilmington, Delaware.

22. Sometime in or after September 2001, CT received notice of the Lenox bankruptcy and was informed that it was an unsecured creditor. CT was informed at that time that Lenox's attorneys and Trustee were located in Philadelphia and was given the address of the Trustee. No one from Lenox or Colonial informed CT that the address for Lenox was anything other than the address of the Lenox Trustee in bankruptcy.

23. Sometime in or after 2001, CT changed its records for Lenox to 1617 John F. Kennedy Blvd, Suite 1900, Philadelphia, Pennsylvania 19103 (hereinafter sometimes "the Philadelphia address"), the address of the Lenox Trustee in bankruptcy and the Trustees attorneys.

24. On February 24, 2004, CT received a summons and complaint for Colonial at CT's office in Virginia in a case styled *Childs v. Colonial Care of Alleghany County, LP d/b/a Brian Center of Alleghany*, No. CL04-17 (hereinafter the "Childs case"). CT forwarded the documents to Colonial at the Philadelphia address. FedEx confirmed delivery of the documents to that address.

25. On information and belief, service of process was received by Lenox's Trustee and the Trustee's attorneys at the Philadelphia address.

26. On April 12, 2004, CT received a motion for default judgment in the Childs case, and again forwarded the documents to Lenox at the Philadelphia address. Again, delivery by FedEx was confirmed.

27. On September 19, 2004 a default judgment was entered against Colonial in the Childs case and an ex parte jury trial on damages was held. The plaintiff was awarded judgment for \$750,000.

28. Since September 2004, representatives of Colonial persistently have claimed that CT is liable for the full amount of the judgment entered against Colonial in the Childs case.

COUNT I –DECLARATORY JUDGMENT

29. CT incorporates by reference all of the allegations contained in paragraph 1 through paragraph 28 as if fully set forth herein.

30. Colonial has repeatedly threatened to sue CT if CT does not pay all or a substantial part of the judgment against Colonial. The amounts claimed by Colonial are all well in excess of the jurisdictional amount set forth in 28 U.S.C. §1332, exclusive of interest and costs.

31. Colonial has refused to acknowledge or agree that CT fully complied with the instructions given to it regarding service of process.

32. Colonial has refused to acknowledge or agree that CT's liability even for proven negligence or willful conduct is limited to \$50,000 and, instead, has made demand upon CT for amounts far in excess of \$50,000.

33. Colonial has denied that it had any contract with CT and that the contract contained the Contractual Terms. CT contends that a valid contract exists, and the Contractual Terms govern its relationship with Colonial.

34. Colonial has denied that it had any obligation to keep CT informed of the address to which service of process should be sent. CT contends that Colonial did have both a contractual and common law duty to keep CT informed of Colonial's address and breached that duty.

35. Colonial contends that CT was "negligent" and is responsible for the damages awarded against Colonial in the Childs case. CT contends that it was not negligent, its liability is limited by its contract and, regardless, Colonial was contributorily negligent.

36. CT pleads New York law governs its contractual relationship with Colonial.

37. There exists an actual case or controversy between CT and Colonial.

38. CT is entitled to a declaratory judgment as follows:

- a. That the Contractual Terms govern the relationship between CT and Colonial and CT complied with its contractual obligations and that New York law applies to that contract;
- b. That Colonial was contractually obligated to keep CT updated on the address to which process should be sent and breached its obligation in regard thereto;

- c. That CT complied with its contractual obligation and was not negligent in sending process to the Philadelphia address given to it;
- d. That, in the alternative, Colonial was contributorily negligent;
- e. That CT is not liable to Colonial for the judgment entered against Colonial; and
- f. In the alternative, that CT's liability in any event is limited to \$50,000.

COUNT II – INDEMNITY

39. CT incorporates by reference the allegations contained in paragraph 1 through paragraph 38 as if fully set forth herein.

40. The Contract Terms between Colonial and CT contain an indemnity clause requiring Colonial to indemnify CT for all costs and expenses incurred by CT in connection with any action brought against CT arising out of its role as registered agent.

41. Colonial filed suit against CT in Virginia alleging that CT somehow owed Colonial a duty in connection with the judgment entered against Colonial and should pay any judgment entered against Colonial. On motion of CT, that suit, entitled COLONIAL CARE OF ALLEGHANY COUNTY, LP d/b/a BRIAN CENTER OF ALLEGHANY, Petitioner, vs. WARREN ROBERT CHILDS and BARBARA ANN CHILDS, Administrators of the estate of Hallie Edith Lee Childs, and CT CORPORATION SYSTEM, Respondents, CHANCERY NO. CH 04-196 (hereinafter the "Chancery Action") was dismissed by the Court.

42. CT is entitled to indemnity for all costs and expenses incurred in connection with defending that suit and any counterclaim in this action at an amount to be determined at trial.

PRAYER

WHEREFORE, for the reasons stated above, CT prays as follows:

1. That based on the foregoing the Court enter a declaratory judgment as aforesaid.
2. That CT be indemnified for all of its costs and expenses, including attorneys' fees incurred in defending the Chancery Action and any counterclaim filed herein.
3. That the Court award any and other further relief, at law or in equity, both general and special, to which CT may be justly entitled.

Respectfully submitted,

CT CORPORATION SYSTEMS, INC.
By Its Counsel:


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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CT Corporation Systems, Inc.

(b) County of Residence of First Listed Plaintiff New York
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Charles P. Kindregan, Esq.
Looney & Grossman LLP, 101 Arch Street
Boston, MA 02110 (617) 951-2800

DEFENDANTS

Colonial Care of Alleghany County, LP

County of Residence of First Listed Defendant Virginia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

UNKNOWN

11457 EFH

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|--|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | PTF <input type="checkbox"/> 2 DEF <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | PTF <input checked="" type="checkbox"/> 5 DEF <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332; 28 U.S.C. § 2201

VI. CAUSE OF ACTION

Brief description of cause:

Declaratory Judgment action over contract for corporate services

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Declaratory Relief

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

July 8, 2005

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) CT Corporation Systems v. Colonial Care of Allegheny County LP

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

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3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Charles P. Kindregan

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